In the Supreme Court of the United States

OCTOBER TERM, 1964

No. 507

MABEL DAVIS JAMES, PETITIONER

v.

UNITED STATES OF AMERICA

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

BRIEF FOR THE UNITED STATES IN OPPOSITION

OPINIONS BELOW

The District Court, entering a summary judgment for the taxpayer (R. 27),[1] did not write an opinion. The opinion of the Court of Appeals (Pet. 1a-11a) is reported at 333 F. 2d 748.

JURISDICTION

The Court of Appeals entered judgment on June 18, 1964. (R. 50.) The petition for a writ of cer-

[1] Citation is to the Transcript of Record in the Court of Appeals which is on file with the Clerk of this Court.

tiorari was filed on September 16, 1964. The jurisdiction of this Court is invoked under 28 U.S.C., 1254(1).

QUESTIONS PRESENTED

1. Whether amounts paid as a widow's allowance, under a State court order providing for periodic payments from the income of an estate, are taxable as income to the recipient under Section 662 of the Internal Revenue Code of 1954.
2. Whether such a tax is constitutional.

STATUTES INVOLVED

The relevant sections of the Internal Revenue Code of 1954 are set out in the Appendix, *infra*, pp. 6-8.

STATEMENT

Oliver B. James died on April 20, 1955, survived by his wife, Mabel Davis James, the taxpayer and petitioner herein. (R. 13.) She and the Valley National Bank of Phoenix, acting as co-executors of the decedent's will, petitioned the Superior Court of Maricopa County, Arizona, for a support allowance for the taxpayer in the amount of $2,000 a month from the time of the death of the deceased until further order of the court. (R. 13-14.) The petition stated "that said family allowance to said widow should be paid out of the income of said estate" which was estimated at $100,000 a year. (R. 13-14.)

On June 1, 1955, the State court entered an order awarding the taxpayer the requested support allowance. The order provided in part as follows (R. 20):

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> Now, Therefore, It Is Hereby Ordered that the sum of Two Thousand Dollars ($2000.00) per month is allowed from the income of the estate of Oliver B. James, deceased, for the maintenance of Mabel Davis James, widow of said deceased, from the date of death of said deceased, and said Co-Executors are hereby ordered to pay said sum out of the income of said estate to Mabel Davis James, the widow of the deceased, from and after April 20, 1955, the time of the death of said deceased, and continuing until the further order of the Court.

The taxpayer received from the estate $18,000 in the taxable year 1956 and $6,000 in the taxable year 1957 as a family allowance. (R. 16.) The Commissioner of Internal Revenue assessed a deficiency of $13,398.71 for the taxable year 1956 as a result of the failure of the taxpayer to include in her reported income for that period the $18,000 payment received. (R. 5.) The taxpayer included the $6,000 payment received in her reported income for the taxable year 1957. (R. 8.)

The taxpayer paid the tax due on both payments (R. 5, 7), filed a claim for refund (R. 5, 8), and instituted this action on November 10, 1960, seeking a refund of the tax paid (R. 9). The District Court granted summary judgment in favor of the taxpayer (R. 27). This decision was reversed by the Court of Appeals sitting *en banc*. (R. 50.)

ARGUMENT

1. The basic principle underlying the taxation of estates (and trusts) is that all of the taxable income

of an estate is to be taxed either to the beneficiaries or to the estate, or part to each. Under the Internal Revenue Code of 1954, the entire income of an estate is initially attributed to the estate as a separate taxable entity;[2] the estate is then allowed a deduction for amounts required to be distributed currently to any beneficiary;[3] and, finally, those amounts of distributed income are then taxed to the recipient.[4] Each beneficiary who is entitled to receive current distributions out of what is considered income from the estate under local law[5] is taxed on this amount so long as the total of such distributions does not exceed what is determined under Section 643(a) to be the "distributable net income" of the estate—*i.e.*, the taxable income of the estate with certain modifications. Certain other receipts by beneficiaries are also taxed, but they are not involved in this case.

In the instant case, the taxpayer received current payments out of the income of the estate by virtue of State law. She was thus a statutory beneficiary of the estate, and, accordingly, as the Court of Appeals held (Pet. 6a), the amount she received was includible in her return as an "amount of income for the taxable year required to be distributed currently." Section 662(a)(1).

2. The tax imposed upon the recipient of a widow's allowance by Section 662 is plainly a tax upon income

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[2] Section 641 (App., *infra*, p. 6).

[3] Section 661 (App., *infra*, p. 7).

[4] Section 662 (App., *infra*, pp. 7-8).

[5] See Section 643(b) (App., *infra*, p. 7).

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within the meaning of the Sixteenth Amendment. It is conceded that the income was derived from property held by the estate and was paid to the taxpayer. A receipt of money by a beneficiary from the income of an estate has long been recognized as a receipt of "income" within the meaning of the Sixteenth Amendment. *Irwin* v. *Gavit*, 268 U.S. 161; *Helvering* v. *Butterworth*, 290 U.S. 365, 368; *Smith* v. *Westover*, 191 F. 2d 1003 (C.A. 9); *Carlisle* v. *Commissioner*, 165 F. 2d 645 (C.A. 6); cf. *Commissioner* v. *Glenshaw Glass Co.*, 348 U.S. 426, 431. The Code merely places the tax burden of the estate's income on the recipient of that income rather than on the estate, which is, in this case, only a conduit.

CONCLUSION

The decision below is correct. There is no conflict of decisions and no other reason for review by this Court. Accordingly, the petition for a writ of certiorari should be denied.

Respectfully submitted.

ARCHIBALD COX,
Solicitor General.

LOUIS F. OBERDORFER,
Assistant Attorney General.

JOHN B. JONES, JR.,
MICHAEL K. CAVANAUGH,
Attorneys.

NOVEMBER 1964.

APPENDIX

Internal Revenue Code of 1954 (26 U.S.C.):

SEC. 102. GIFTS AND INHERITANCES.

(a) *General Rule.*—Gross income does not include the value of property acquired by gift, bequest, devise, or inheritance.

(b) *Income.*—Subsection (a) shall not exclude from gross income—

* * * *

(2) where the gift, bequest, devise, or inheritance is of income from property, the amount of such income.

* * * *

SEC. 641. IMPOSITION OF TAX.

(a) *Application of Tax.*—The taxes imposed by this chapter on individuals shall apply to the taxable income of estates or of any kind of property held in trust, including—

* * * *

(3) income received by estates of deceased persons during the period of administration or settlement of the estate; and

* * * *

SEC. 643. DEFINITIONS APPLICABLE TO SUBPARTS A, B, C, AND D.

(a) *Distributable Net Income.*—For purposes of this part, the term "distributable net income" means, with respect to any taxable year, the taxable income of the estate or trust computed with the following modifications—

* * * *

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(b) *Income.*—For purposes of this subpart and subparts B, C, and D, the term "income", when not preceded by the words "taxable", "distributable net", "undistributed net", or "gross", means the amount of income of the estate or trust for the taxable year determined under the terms of the governing instrument and applicable local law. * * *

(c) *Beneficiary.*—For purposes of this part, the term "beneficiary" includes heir, legatee, devisee.

SEC. 661. DEDUCTION FOR ESTATES AND TRUSTS ACCUMULATING INCOME OR DISTRIBUTING CORPUS.

(a) *Deduction.*—In any taxable year there shall be allowed as a deduction in computing the taxable income of an estate or trust (other than a trust to which subpart B applies), the sum of—

(1) any amount of income for such taxable year required to be distributed currently * * *

* * * *

but such deduction shall not exceed the distributable net income of the estate or trust.

* * * *

SEC. 662. INCLUSION OF AMOUNTS IN GROSS INCOME OF BENEFICIARIES OF ESTATES AND TRUSTS ACCUMULATING INCOME OR DISTRIBUTING CORPUS.

(a) *Inclusion.*—Subject to subsection (b), there shall be included in the gross income of a beneficiary to whom an amount specified in sec-

tion 661(a) is paid, credited, or required to be distributed (by an estate or trust described in section 661), the sum of the following amounts:

(1) *Amounts required to be distributed currently.*—The amount of income for the taxable year required to be distributed currently to such beneficiary, whether distributed or not. If the amount of income required to be distributed currently to all beneficiaries exceeds the distributable net income (computed without the deduction allowed by section 642(c), relating to deduction for charitable, etc., purposes) of the estate or trust, then, in lieu of the amount provided in the preceding sentence, there shall be included in the gross income of the beneficiary an amount which bears the same ratio to distributable net income (as so computed) as the amount of income required to be distributed currently to such beneficiary bears to the amount required to be distributed currently to all beneficiaries. For purposes of this section, the phrase "the amount of income for the taxable year required to be distributed currently" includes any amount required to be paid out of income or corpus to the extent such amount is paid out of income for such taxable year.

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